



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 29, 2013

Ms. LeAnn M. Quinn
City Secretary
City of Cedar Park
450 Cypress Creek Road
Cedar Park, Texas 78613

OR2013-06991

Dear Ms. Quinn:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 485731 (Cedar Park Reference No. 13-362D).

The City of Cedar Park (the "city") received a request for all incident and arrest reports pertaining to a named individual, including a specified arrest report. You state the city will release some of the requested information. You also state the city will withhold social security numbers pursuant to section 552.147(b) of the Government Code.¹ You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.1175, and 552.130 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the city did not submit information pertaining to the specified arrest report. To the extent the information existed at the time of the request, we assume the city has

¹Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

²Although you do not raise section 552.108 of the Government Code in your brief, we understand you to raise this exception based on your arguments.

released it to the requestor. If not, then the city must do so immediately. *See* Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, information that refers to an individual solely as a victim, witness, or involved person is not private as criminal history and may not be withheld under section 552.101 on that basis.

The present request, in part, requires the city to compile unspecified law enforcement records concerning the named individual. We find this request for unspecified law enforcement records implicates the named individual's right to privacy. Therefore, to the extent the city maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the city must withhold any such information under section 552.101 of the Government Code in conjunction with common-law privacy.³

However, we note you have submitted information in which the named individual is not depicted as a suspect, arrestee, or criminal defendant. This information does not implicate the privacy interests of the individual and may not be withheld as a compilation of criminal history. Accordingly, we will address your arguments against disclosure of this information.

Section 552.108(a)(2) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal

³As our ruling is dispositive, we need not address your arguments against disclosure of this information.

investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state the information at issue in Exhibit C pertains to a criminal investigation that ended in a result other than conviction or deferred adjudication. Thus, we find you may withhold Exhibit C under section 552.108(a)(2) of the Government Code.⁴

We now address your arguments for the remaining information. As noted above, common-law privacy protects highly intimate or embarrassing information that is not of legitimate concern to the public. *Indus. Found.*, 540 S.W.2d at 685. The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* includes information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Upon review, we find the information we have marked is highly intimate or embarrassing and of no legitimate public concern and must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.1175 applies, in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

(b) Information that relates to the home address, home telephone number, emergency contact information, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)(1), (b). We note that an individual's personal post office box number is not a "home address" for purposes of section 552.1175. *See Open Records Decision No. 622 at 6 (1994)* (legislative history makes clear that purpose of section 552.117

⁴As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

is to “protect public employees from being harassed *at home*” (emphasis added) (citing House Committee on State Affairs, Bill Analysis, H.B. 1979, 69th Leg. (1985)). Some of the information in Exhibit B relates to officers not employed by city’s police department. You state the information you have marked under section 552.1175 pertains to an officer who timely elected confidentiality pursuant to section 552.1175(b). We find the city must withhold the information you have marked under section 552.1175 of the Government Code. The city must also withhold the additional information we have marked in Exhibit B under section 552.1175 if the individuals to whom the information pertains are still licensed peace officers and they elect to restrict access to their information in accordance with section 552.1175(b). If these individuals are no longer licensed peace officers or no election is made, the city may not withhold these individuals’ information under section 552.1175.

You state the city will withhold the driver’s license numbers you have marked under section 552.130(a)(1) pursuant to section 552.130(c) of the Government Code and the Texas license plate numbers you have marked pursuant to Open Records Decision No. 684 (2009). Section 552.130(c) authorizes a governmental body to redact, without the necessity of requesting a decision from this office, the motor vehicle record information described in subsections 552.130(a)(1) and (a)(3). *See* Gov’t Code § 552.130(c); *see also id.* § 552.130(d)-(e) (requestor may appeal governmental body’s decision to withhold information under section 552.130(c) to attorney general, and governmental body withholding information pursuant to section 552.130(c) must provide certain notice to requestor). Open Records Decision No. 684 permits a governmental body to redact Texas license plate numbers, which are made confidential by section 552.130(a)(2), without requesting an attorney general decision. ORD 684. However, we note the vehicle identification numbers you have marked are not subject to section 552.130(c) or Open Records Decision No. 684 and, therefore, may not be withheld without requesting a decision from this office. Section 552.130 provides information relating to a motor vehicle operator’s or driver’s license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov’t Code § 552.130(a). Upon review, we find city must withhold the motor vehicle record information you have marked, and the additional motor vehicle record information we have marked, in Exhibit B under section 552.130 Government Code.

In summary, to the extent the city maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the city must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy. The department may withhold the information in Exhibit C under section 552.108(a)(2) of the Government Code. The department must withhold the information we have marked in Exhibit B under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information you have marked in Exhibit B, and the additional information we have marked, under section 552.1175 of the Government Code if the individuals to whom the information pertains are still licensed peace officers and they elect to restrict access to their information in accordance with

section 552.1175(b) of the Government Code. The city must withhold the motor vehicle record information you have marked, and the additional motor vehicle record information we have marked, in Exhibit B under section 552.130 of the Government Code. The remaining information must be released.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Thana Hussaini', written over a faint circular stamp or watermark.

Thana Hussaini
Assistant Attorney General
Open Records Division

TH/som

Ref: ID# 485731

Enc. Submitted documents

c: Requestor
(w/o enclosures)